

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

ROBERT L. MACKEY

Case No. C-3:12-cv-073

Petitioner,

**Judge Thomas M. Rose
Magistrate Judge Michael R. Merz**

-v-

MICHAEL SHEETS, Warden,

Respondent.

ENTRY AND ORDER OVERRULING MACKEY'S OBJECTIONS (Doc. #19) TO THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS; OVERRULING MACKEY'S OBJECTIONS (Doc. #24) TO THE MAGISTRATE JUDGE'S SUPPLEMENTAL REPORT AND RECOMMENDATIONS; ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS (Doc. #17) AND SUPPLEMENTAL REPORT AND RECOMMENDATIONS (Doc. #22) IN THEIR ENTIRETY AND TRANSFERRING MACKEY'S PETITION FOR A WRIT OF HABEAS CORPUS TO THE SIXTH CIRCUIT AS A SECOND OR SUCCESSIVE PETITION

This matter comes before the Court pursuant to Petitioner Robert L. Mackey's ("Mackey's") Objections (doc. #19) to Magistrate Judge Michael R. Merz's Report and Recommendations (doc. #17) and Mackey's Objections (doc. #24) to Magistrate Judge Merz's Supplemental Report and Recommendations (doc. #22). Upon review, the Magistrate Judge recommends that Mackey's Petition for a Writ of Habeas Corpus be transferred to the Sixth Circuit as a second or successive petition.

The Warden responded to Mackey's Objections to the initial Report and Recommendations, and the time has run and the Warden has not responded to Mackey's Objections to the Supplemental Report and Recommendations. Therefore, both sets of Mackey's Objections are ripe for decision.

As required by 28 U.S.C. §636(b) and Federal Rules of Civil Procedure Rule 72(b), the District Judge has made a de novo review of the record in this case. Upon said review, the Court finds that Mackey's Objections to the Magistrate Judge's Report and Recommendations and Mackey's Objections to the Magistrate Judge's Supplemental Report and Recommendations are not well-taken, and they are hereby OVERRULED. The Magistrate Judge's Report and Recommendations and Supplemental Report and Recommendations are adopted in their entirety.

Mackey's current Petition for a Writ of Habeas Corpus is given consideration as required by the AEDPA and the Rules Governing § 2254 Cases. Because it is second or successive, this Court lacks jurisdiction to adjudicate Mackey's current Petition in the absence of Circuit Court authorization. Mackey's Petition must, therefore, be transferred to the Sixth Circuit.

DONE and **ORDERED** in Dayton, Ohio, this Fifteenth Day of January, 2013.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record